IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9420 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MA PATEL

Versus

STATE OF GUJARAT

Appearance:

MR PARESH UPADHYAY for Petitioner

MR PREMAL JOSHI, AGP for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 21/06/2001

ORAL JUDGEMENT

#. The petitioner was appointed on the post of Social Welfare Officer, Class-II. He was subjected to the departmental inquiry for which the chargesheet was issued on 31.7.1992 on the ground that at the time of recruitment of certain peons in the office at Bhavnagar, the petitioner sent name of a candidate who was newly registered in the office, instead of sending the names of

the candidates whose names were registered earlier for the purpose of getting the appointment. Thereafter, joint inquiry was conducted against the petitioner along with another employee who was also tried together though the role attributed to both of them was different. The particulars about the charges are at page 49 wherein it is mentioned that so far as the present petitioner is concerned the charge against him is that he sent the name of a newly registered candidate for the purpose of appointment on the post of peon and the names of the candidates who were registered earlier, were not sent and thus the petitioner was negligent in his duty. Subsequently, the appointment of the said person was cancelled by the Government. Thereafter, by order dated 5.8.1998 the petitioner was removed from service. The said order is impugned in this petition.

#. It is required to be noted that similar order of removal was passed against another employee i.e. Mr.K.N.Rathod. The charge against that gentleman was that he sat in the interview and that he manipulated the marks to oblige a particular candidate. The aforesaid person Mr.K.N.Rathod challenged the said action of removal by filing a petition, being Special Civil Application No.7233 of 1998. This Court (Coram: K.R.Vyas,J) allowed the petition by its order dated 23.9.1998 and the petitioner in that petition was ordered to be reinstated in service by setting aside the removal order with all monetary benefits. In the said case, the Court came to the conclusion that the charges proved against the said employee were found to be of negligence in the performance of the duty which, is in the opinion of the Court are quite minor. The authority was asked to reconsider their decision and it was held that the authority can impose minor punishment with respect to those charges after reinstating the petitioner in service. Ultimately, the aforesaid petition was allowed with no order as to costs. The said order is produced at page 90 of the compilation of the petition.

#. Learned AGP Mr.Joshi fairly states that Letters Patent Appeal No.1311 of 1998 against the aforesaid decision dated 23.9.1998 was disposed of as the same was not entertained. Mr.Joshi pointed out that the facts of the case of the petitioner as well as that of the aforesaid employee are on the same footing.

#. Mr.Upadhyay, learned advocate for the petitioner states that the order of this Court in the said petition was complied with by the Department.

#. In view of the aforesaid facts and circumstances, especially when for the same incident in question one employee is already reinstated in service, in my view, no different view can be taken so far as the present petitioner is concerned. Under these circumstances, the petition is required to be allowed and accordingly the same is allowed. The respondent is directed to reinstate the petitioner on his original post within a period of four weeks from the date of receipt of the writ of this Court with continuity of service and other consequential benefits. So far as the question about the payment of back wages is concerned, considering the facts and circumstances of the case, I am of the opinion that interest of justice would be served if the petitioner is ordered to be paid 40% back wages for the intervening period. Accordingly the respondent is directed to pay 40% back wages to the petitioner for the intervening period, i.e. from the date of his removal till the date of his reinstatement. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(P.B.Majmudar,J)
(pathan)